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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Sections of the Cable Consumer Protection and Competition Act of 1992	)	MM Docket No. 92-266
	)	
Rate Regulation	)	

To: The Commission

PETITION FOR RECONSIDERATION

BLADE COMMUNICATIONS, INC.

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June 21, 1993

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Blade Communications, Inc., ("Blade")[1], by its counsel and pursuant to §1.429 of the Commission's Rules, requests reconsideration of the Commission's Report and Order, MM Docket 92-266, FCC 93-177 (released May 3, 1993) (the "Order").

I. INTRODUCTION AND SUMMARY

From the onset of its operations in 1966 to the present, Blade has pursued the objective of providing high quality service to the consumer at an affordable price. Indeed, its systems' rates have been lower than those charged by other systems in the region providing comparable programming line-

[1] Blade provides cable television service through three subsidiaries: Buckeye Cablevision, Inc., serving approximately 120,000 subscribers in Toledo, Ohio and vicinity, Erie County Cablevision, Inc. serving approximately 19,000 subscribers in Sandusky, Ohio and vicinity and Monroe Cablevision, Inc. serving approximately 9,000 subscribers in Monroe, Michigan and vicinity.

ups to comparably-sized communities.[2] In addition, the systems were among the earliest in the industry to adhere to customer service practices that meet or exceed standards contained in the Commission's recently-adopted rules. See First Report and Order in MM Docket 92-258, FCC 93-72 (released Feb. 3, 1993) and Attachment 1.

In light of the commitment it has made to its subscribers and the communities it serves over the years, Blade felt it had no compelling reason to oppose adoption of the Cable Consumer Protection and Competition Act of 1992 (the "Act"); indeed, it was undisturbed by the prospect of a measure designed to reign in abuses in the industry. As a result, Blade encouraged Rep. Marcy Kaptur (D-Ohio), the representative for the Congressional District in which its largest system is located, to vote for the original House version of this legislation.

Had the Commission closely adhered to its Congressional mandate in implementing the Act's rate provision, Blade would not be seeking reconsideration today. After participating in the initial phase of the Commission's rate rule making, Blade now finds itself confronting a complex web of rules and policies which it believes have so veered from original

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[2] In recent years Blade's Toledo system had the lowest rates of any of the major cities in the state, with a total of 42 channels of basic and satellite tiers offered for a total of \$20.95. Rates for similar service in other major Ohio cities ranged from \$22.85 to \$27.52.

Congressional intent that the industry's "good actors" are being penalized as much as -- if not more than -- operators that the legislation targeted for regulation. In addition, the level at which the benchmarks have been set, when combined with the loss of revenue from equipment and additional outlets, jeopardize the industry's ability to continue to raise capital.

This petition will focus on the three specific provisions that will have a severe adverse effect on the systems' ability to provide their customers with the newest and best that the equipment, programming and information industries have to offer:

(1) the regulatory treatment of charges for equipment, installation and additional outlets (Rule §76.923(c));

(2) the benchmark approach's disincentives for technical upgrading of the system and adding new programming (Rule §76.922(d)); and

(3) the prohibition on treatment of retransmission consent costs as external costs until October 1994 (Rule §76.922(c)(2)(iii)).

II. REGULATORY TREATMENT OF CHARGES FOR EQUIPMENT, INSTALLATION AND ADDITIONAL OUTLETS

The Commission's approach to regulation of basic equipment is flawed because it applies to virtually all equipment rather than just to equipment used for basic service. In its original comments in this proceeding, the Company argued that charges for equipment provided to subscribers primarily for unregulated services and used only incidentally for basic should not be subject to cost-based regulation. Otherwise, contrary to the apparent legislative intent, there is virtually no equipment that would be immune from to cost-based regulation.

The impact of subjecting all equipment and additional outlets -- even when used only incidentally for basic service -- is extremely harsh, as illustrated by the status of additional outlet charges in the company's largest system. In 1966, the system charged $1.00 per month for an additional outlet. Today, nearly 30 years later, the monthly price is only $2.50, as compared with the $4.07 it would be had the price merely increased with inflation[3]. Approximately one-third of the system's subscribers currently have one or more additional outlets, which certainly indicates that consumers consider the price for this extra convenience to be fair and reasonable. Yet, under the Commission's formula, the price that the system can charge for an additional outlet is only 24¢ per month. Blade has estimated that revenues will decline by $1,600,000 per year because of the reduction in the price of additional outlets and other equipment-related charges.

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3 Although these charges are higher than "cost" determined in accordance with the rules' formula, they enable cable operators to charge lower rates for the single-outlet subscriber as well as to keep installation rates low enough to attract new subscribers.

Blade believes that Congress provided for cost-based regulation of these charges to protect the interests of the "lifeline" subscriber and never intended for it to apply all equipment, even that purchased solely for the purpose of receiving expanded tiers, premium channels, or pay-per-view. Blade urges the Commission to revise the scope of this provision.

III. THE BENCHMARK'S DISINCENTIVES FOR UPGRADING THE SYSTEM OR ADDING NEW PROGRAMMING

The Order identifies several categories of costs ("external costs") that cable operators may pass through to subscribers without a cost-of-service showing, even if the resulting rates exceed the applicable price cap. Blade strongly endorses this general "pass-through" policy, because it is the only way that the benchmark approach can be a workable, viable alternative to full-blown cost-of-service regulation. In order for cable systems to continue incorporating advances in technology into their operations -- or, for that matter, even to maintain the current level of quality -- they must be able to recover external costs over which they have little or no control. A full and fair recognition of these external costs of doing business, however, requires that the Commission modify its pass-through policy.

Below, Blade suggests two modifications that would greatly improve the usefulness of the benchmark approach.

A. The Commission Should Consider Capital Costs On A Going-Forward Basis

The Commission has determined that cable service rates will be regulated on a going-forward basis by price caps applied to rates set in accordance with the applicable rate benchmark. See Order at para. 262. Under this price cap mechanism, rate increases are limited to increases in the GNP fixed weight price index (GNP-PI). Significantly, the FCC has declined to allow operators to pass-through the costs of system improvements, including the capital investment. See Order at n.608. Thus, operators that undertake such system improvements are limited in their ability to recover the capital investment by the annual GNP-PI cap on rate increases, unless they make a cost-of-service showing.

Blade urges the Commission to reconsider its treatment of capital investment in system expansions and upgrades. Specifically, the FCC should allow cable operators to recover their full investment by passing through such costs to subscribers via a per channel rate adjustment. In addition, pass-throughs should include a reasonable rate of return on capital investment.

This approach is warranted for several reasons. First, an explicit statutory objective of the Act is to "ensure that cable operators continue to expand, where economically justified, their capacity and the programs offered over their cable systems." 1992 Cable Act at § 2(b)(2). As Congress recognized, system upgrades are a prerequisite to increased capacity, which in turn makes possible a greater diversity of programming and information. Moreover, cable operators are ideally positioned to invest in and build substantial portions of the new "information infrastructure," which has become an urgent national objective. By allowing operators to recover capital costs associated with system improvements.

depending on when local franchising authorities receive FCC certification.[5] Thus, the start date could vary negotiations, in that cable systems opting for the benchmark cannot recover increased costs they incur resulting from retransmission consent prior to October, 1994.

Although the Commission has recognized that retransmission consent will increase cable systems' operating costs immediately upon taking effect in October, 1993, see Order at paras. 247 & 547 n. 1402, it erroneously assumed that current cable basic rates already reflect the value of broadcast signal carriage. See Order at para. 243. Early reports indicate that the fees many stations will be seeking for carriage will be substantial. Although Blade's systems

The benchmark rules also prohibit recovery of the initial increase in an effort to protect subscribers from "any precipitous increase" in rates after October 6, 1993 (the date retransmission consent goes into effect). See Order at para. 247. Ironically, the Commission's prohibition on recovery of initial retransmission consent costs may adversely affect cable subscribers in an even more dramatic way than would a slight increase in costs. Many subscribers surely would prefer a slight increase in rates to losing signals. Besides depriving customers of valued programming, the current policy also would deny many broadcasters the benefits retransmission consent was intended to provide them.

Blade urges the Commission to reconsider its position and allow cable operators to include initial retransmission consent costs when they first begin measuring the change in

V. CONCLUSION

For the benchmark that the Commission has adopted to be a workable option, it must allow cable systems a reasonable return on equipment, installation and additional outlets. In addition, the benchmark must include incentives for system upgrades. Finally, the delay on recovery of costs as well as